STATE OF MICHIGAN

COURT OF APPEALS

AUTO-OWNERS INSURANCE COMPANY, Plaintiff-Appellee, v FARM BUREAU MUTUAL INSURANCE COMPANY and FARM BUREAU MUTUAL INSURANCE COMPANY OF MICHIGAN Defendants-Appellants.	UNPUBLISHED December 16, 2008 No. 279322 Saginaw Circuit Court LC No. 05-058151-NF

Before: Saad, C.J., and Fitzgerald and Beckering, JJ.

PER CURIAM.

Defendant Farm Bureau Mutual Insurance Company appeals an order that granted plaintiff Auto-Owners Insurance Company's motion for summary disposition under MCR 2.116(C)(10). For the reasons set forth below, we affirm.

I. Facts

Defendant argues that the trial court should not have granted summary disposition to plaintiff because the injured person, Irma Conn, sustained her injuries during the incidental use of a motor vehicle and, therefore, did not qualify for benefits under the no-fault insurance act, MCL 500.3101 *et seq*. The motor vehicle at issue, a dump truck, was owned by the employer of Irma's husband, George Conn. The employer hired George to deliver beets to a processing plant and Irma was riding with George while he made his deliveries. After George delivered the first load of beets, he returned to the beet farm to refill his truck. Before doing so, George stopped the truck at the end of the beet field so he could dump the remnants of the previous load from the bed of the dump truck. George knew that he parked near electrical wires, but he did not know that he was under them.

George raised the bed of his truck and got out of the vehicle to open the truck gate. The parties do not dispute that when it was raised, the dump box came into contact with an overhead live wire and this caused the truck to become electrified. As he finished dumping the load and started to lower the dump box, George saw smoke coming from his left front tire. He sprayed the tire with a fire extinguisher and noticed his wife was still in the truck. As George inspected the vehicle further, he heard one of the tires blow and decided to check on his wife. He found

Irma lying burned and unconscious on the ground, and he used CPR to revive her. Irma was electrocuted while she was getting out of the truck. Plaintiff, as Irma's personal auto-insurance carrier, paid her personal injury protection (PIP) benefits and seeks reimbursement from defendant. The parties agree that if Irma was eligible for PIP benefits, defendant would be the priority payor.

II. Analysis[1]

In *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 33; 651 NW2d 188 (2002), our Court stated that "[t]he starting point for any analysis [regarding PIP benefits] is MCL 500.3105(1)." The statute provides:

> Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter. [MCL 500.3105(1).]

The determination of whether PIP benefits are available involves a two-step inquiry. *Rice, supra* at 33. The first step focuses on whether the bodily injury was accidental and if it arose out of the use of a motor vehicle as a motor vehicle. *Id.* The second step concerns whether coverage for the injury is nonetheless excluded by the no-fault act, and whether an exception to the exclusion applies. *Id*.

Here, there is no dispute that Irma's injuries were accidental.[2] With regard to the other part of the first inquiry, as this Court reiterated in *Drake v Citizens Ins Co of America*, 270 Mich App 22, 26; 715 NW2d 387 (2006):

> "[W]hether an injury arises out of the use of a motor vehicle 'as a motor vehicle' under § 3105 turns on whether the injury is closely related to the transportational function of motor vehicles." *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 225-226; 580 NW2d 424 (1998). While a vehicle need not be in motion at the time of an injury in order for the injury to "arise out of the use of a motor vehicle as a motor vehicle," *McKenzie, supra* at 219 n 6, the phrase "as a motor vehicle" does

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[1] A trial court's determination of a motion for summary disposition is reviewed de novo. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). When reviewing a motion brought under MCR 2.116(C)(10), the court considers the affidavits, depositions, pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the non-moving party. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id*.

[2] "[W]hen there is no dispute about the facts, the issue whether an injury arose out of the use of a motor vehicle is a legal issue for a court to decide and not a factual one for a jury." *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 631; 563 NW2d 683 (1997)

> require a general determination of whether the vehicle in question was being used, maintained, or operated for transportational purposes, *id.* at 219.

On the question of whether Irma's injury was related to the truck's transportational function, this case is similar to *Drake*, in which the plaintiff was injured while unloading feed from the back of his truck. *Drake, supra* at 24. Though George was unloading beet *remnants* from his truck, in both circumstances, the vehicles were being used for the hauling and delivery functions. Thus, as in *Drake*, "plaintiff's injury is closely related to the motor vehicle's *transportational function*, and therefore arose out of the operation, ownership, maintenance, or use of a motor vehicle 'as a motor vehicle' pursuant to *McKenzie, supra* at 220." *Drake, supra* at 26 (emphasis in original). Moreover, we agree with plaintiff that Irma was using the vehicle as a means of transportation because she was riding with her husband during his deliveries. Accordingly, Irma's injuries satisfy the first requirement under MCL 500.3105(1).

Under the second step of the § 3105 analysis, injuries arising from the use of a parked vehicle are not covered by the no-fault act unless one of the exceptions under MCL 500.3106(1) applies:

> (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.
>
> (b) Except as provided in subsection (2), the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.
>
> (c) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

Under § 3016(1)(c), Irma was alighting from the truck at the time of her injury, so the exception set forth in § 3106(1)(c) applies. Moreover, § 3106(1)(a) also applies because parking under the live electrical wire while raising the dump box caused an unreasonable risk of the electrocution that injured Irma. Thus, as the trial court found, Irma was entitled to PIP benefits.

The parties agree that if Irma's injuries are covered by the no-fault act, then defendant Farm Bureau Mutual Insurance Company is responsible to pay these benefits. See MCL 500.3114(3).

Affirmed.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering